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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/557 /2005-558 /2005 – SM[BR] Date 01/01/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant
Vs
TAKSUS STEELS P VT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1615 -1616 / 2008- **SM[BR]** dated 10.12.08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   1. TAKSUS STEELS P VT. LTD.
   2. SHRI MOHINDER GUPTA, M.D.
   MANDI GOBINDGARH, PUNJAB
2. Adv. / Consult
   NONE;-----------

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal Nos. 557-558 of 2005 (SM)

[Arising out of the Order-in-Appeal No. 711-712/CE/CHD/2004 dated 16/11/2004 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities? :

CCE, Chandigarh   Appellant

Versus

1. M/s Taksus Steels Pvt. Ltd.]   Respondent
2. Shri Mohinder Gupta, M.D.]

Appearance

Shri S.K. Panda, Authorized Representative (DR) – for the appellant.

None – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 10/12/2008.

Final Order No. 1615-1616/08-SM(BR) Dated : 10.12.08

Per. Rakesh Kumar :-

These are the appeals by the Revenue against the impugned order-in-appeal dated 16/11/04 passed by CCE (Appeal), Chandigarh by which Commissioner (Appeals) set aside the Assistant Commissioner's order-in-original dated 15/09/04 confirming Cenvat credit demand of Rs. 2,23,910/- (Rupees Two Lakhs Twenty Three Thousand Nine Hundred Ten only) against the Respondent and also imposing penalty of equal amount on the Respondent company as well as penalty of Rs. 1,16,955/- (Rupees One Lakh Sixteen Thousand Nine Hundred Fifty Five only) on Shri Mohinder Gupta, Managing Director of the Respondent company. None appeared for the Respondents and I find that on earlier two occasions also when these cases were listed, nobody appeared for the Respondents. Therefore, the matter is being decided after the hearing the Revenue.

2. Heard Shri S.K. Panda, the learned Departmental Representative who pleaded that in this case the Cenvat credit amounting to Rs. 2,23,910/- has been taken by the Respondent company on the basis of invoices issued by Tata Iron & Steel Co., stock yard, Mandi Gobindgarh, the vehicle number mentioned on which were found to be fake. In other words, the vehicles in which the goods supposed to have been supplied by the supplier – Tisco stock yard were transported to the Respondent, do not exist as per the records of the motor vehicle authorities. The vehicle numbers written on the invoices pertained to two wheelers and three wheelers which are not capable of transporting the quantity which is supposed to have been transported in those vehicles. He cited the Tribunal's judgment in M/s Ranjeev Alloys's case (order No. E/363 of 2007 (SM) dated 08/12/2008), wherein it was held by the Tribunal that in such a situation the burden of proving that the goods had, indeed, been received under such invoices shifts to the manufacturer, who has taken Cenvat credit on the basis of such invoices and it is that manufacturer who has to prove that the goods had been received.

3. I find that in this case, the CCE (Appeals), by the impugned order has set aside the Cenvat credit demand and penalty only on the ground that just because the vehicle numbers mentioned in the invoices pertained to two wheelers and three wheelers, it cannot be concluded that the goods covered under those invoices had not been received when payment for the goods had been made through cheques and demand drafts and the goods received have been used in the manufacture of final products which have been cleared on payment of duty.

4. Just because the payments had been made to the supplier through cheque/demand draft, it cannot be concluded that the goods covered under those invoices had, indeed, been received. As held by Tribunal in the case of M/s Ranjeev Alloys (Supra) when the vehicle numbers mentioned on the invoices are found to be fake and not capable of carrying the quantity of the goods mentioned in the invoices, the burden of proving that the goods had, indeed, been received shifts to the manufacturer who has taken Cenvat credit on the basis of those invoices and it is the manufacturer who has to prove beyond doubt that the goods had been received. The

impugned order does not discuss as to who is the transporter of the goods and whether any GRs/lorry receipts issued by the transporter had been produced and whether the goods, in question, had been supplied by the supplier – Tisco stock yard. The impugned order, therefore, is not sustainable and the same is set aside. The matter is remanded to the Assistant Commissioner for denovo adjudication in the light of the judgment of the Tribunal in the case of M/s Ranjeev Alloy's case.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK